

4  
Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

Criminal Appeal No. 643 of 2005

( Memorandum of Cr. Appeal U/s 374 (2) of Cr.P.C. )

2867/05  
06/8/05  
S. to D. Sanyal  
Advocate  
APPELLANT  
IN JAIL

: Trilochan Verma S/o Keju Ram Verma,  
aged about 48 years, resident of  
Kanta, P.S. Simga, District Raipur .

Versus

: The State of Chhattisgarh, through  
the District Magistrate ~~Baloda~~ Raipur  
Raipur (CG).

MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION 374 (2) OF Cr.P.C.

CONVICTION

SENTENCE

34

A.F.R.

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Cr. Appeal No.643/2005**

---

**Trilochan Verma**

**Versus**

**The State of Chhattisgarh**

---

**Post for Judgment: 01.03.2006**

**Sd/-  
Dilip Raosaheb Deshmukh  
Judge**

**01.03.2006**

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Cr. Appeal No.643/2005****Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.****Trilochan Verma****Versus****The State of Chhattisgarh****Shri Sunil Sahu, Counsel for the appellant.****Shri Somesh Bajaj, Dy.G.A. for the State.****JUDGMENT****(Delivered on 1<sup>st</sup> day of March 2006)**

This appeal is directed against the judgment dated 28<sup>th</sup> June 2005 delivered by Shri M.S.Kerketta, 2<sup>nd</sup> Additional Sessions Judge, Baloda Bazar, District Raipur in sessions case No.16/2005 whereby the appellant was convicted under Section 376 (2)(f) of the I.P.C. and was sentenced to undergo rigorous imprisonment for 10 years and a fine of Rs.500/-, in default to undergo additional rigorous imprisonment for 6 six months.

2. Briefly stated the prosecution story is that on 7.11.2004 at about 5.30 P.M. the prosecutrix, a girl aged about 11 years, was sent by her mother Urmila Bai P.W.1 to the house of one Sitaram for returning the grinding stone. After half an hour, the prosecutrix returned home crying and told Urmila Bai P.W.1 that while she was in the lane near the house of Lachhan Yadav, the appellant caught hold of her, took her to the *Badi* and removing her underwear committed rape on her.

3. F.I.R. Ex.P.1 was lodged soon thereafter at 10.00 P.M. at Police Station Simga situated at a distance of 7 kilometers. One blue underwear having semen like stains was seized from the prosecutrix on 8.11.2004 vide Ex.P.2. The prosecutrix was sent for medical examination to Dr. Farzana Begum P.W.6 on 8.11.2004 who, during internal examination, found congestion on the vulva and also found that hymen was ruptured with reddishness. There was swelling on the vagina and the examination was painful. In the opinion of Dr. Farzana Begum P.W.6 there was possibility of sexual intercourse with the prosecutrix but no definite opinion could be given. Vaginal slides were prepared and were sent for chemical analysis. One brown coloured underwear with semen like stains was also seized from the appellant on 8.11.2004. On being sent to the Forensic Science Laboratory for chemical analysis, presence of semen and human spermatozoa was confirmed on the underwear of the prosecutrix and the appellant and also on the vaginal slides. After completion of investigation, the appellant was prosecuted under Section 376 (2) (f) of the I.P.C.

4. The appellant abjured the guilt. The prosecution examined as many as 10 witnesses. No evidence in defence was led by the appellant. Learned trial Judge relying on the evidence led by the prosecution convicted and sentenced the appellant as aforesaid.

5. Shri Sunil Sahu, learned counsel for the appellant has argued that there is absolutely no evidence on record to prove that the prosecutrix was a woman under 12 years of age. It was contended that the seizure of Kotwari Birth Register vide Ex.P.3 showed that the date of birth of one Sangeeta, daughter of Pherha Ram on 13.2.1992 was recorded whereas the name of the prosecutrix was

Anupa Sahu. Ossification test for determining the age of the prosecutrix was not conducted. The entry relating to date of birth of the prosecutrix was not proved by the prosecution. It was next argued that there was no evidence on record to prove penetration by the appellant during the sexual intercourse, if any, with the prosecutrix. Although the prosecutrix had stated that the appellant removed her underwear and pushing her on the ground mounted on her and performed "Bakni" but in cross-examination the prosecutrix has admitted that by "Bakni" she meant that the appellant had removed her underwear. Thus, even as per the testimony of the prosecutrix it was not established that penetration had taken place. Learned counsel argued that the testimony of Sitaram P.W.5 and Kailash Goswami P.W.10 also goes to show that mother of the prosecutrix had not told these witnesses that the appellant had committed sexual intercourse with her daughter. On these premises, learned counsel for the appellant has submitted that the prosecution has utterly failed to prove the guilt of the appellant under Section 376 (2) (f) of the I.P.C. Reliance was placed on Suresh ALIAS Musuwa Vs. State of Chhattisgarh reported in B 2005(2) C.G.L.J. 79 and Ravi Maheshwari v. State of M.P. and others reported in 2005 (IV) MANISA 148 (M.P.). In Ravi Maheshwari's case (supra), the prosecutrix had admitted that she was tutored before giving evidence in court. The prosecution had neither produced the report of the chemical examination of the under-garments of the accused and prosecutrix nor examined material witness i.e. the father of the prosecutrix who was alleged to have seen the incident. The Prosecutrix was declared hostile. On these grounds, the appellant was acquitted after giving him the benefit of doubt. In the case of Suresh (supra), the testimony of the prosecutrix was not found to be reliable being

-5-

tutored. No injury was found on her body. There was delay of two months in arresting the appellant. No satisfactory explanation was found for non-examination of the investigating officer. On these grounds, the appellant was acquitted of the charge under Section 376 & 511 of the I.P.C.

6. On the other hand, Shri Bajaj, learned Dy. Govt. Advocate has argued in support of the impugned judgment and contended that the testimony of Dr. Farzana Begum clearly proved that the appellant had committed sexual intercourse with the prosecutrix. It was also contended that the prosecutrix is a child witness aged about 11 years and the trial Judge had noted her demeanour that she had started crying and would not depose any further after she said that the appellant had done "*Bakni*" with her. Since her testimony was wholly un rebutted in cross-examination and also found support from the report of F.S.L., in the above facts and circumstances, it could be presumed that the appellant had committed forceful sexual intercourse with the prosecutrix.

7. Having heard the rival contentions, I have perused the record. For constituting an offence of rape under section 376 (2)(f), it is essential for the prosecution to establish beyond doubt that the age of the prosecutrix on the date of occurrence was less than 12 years and that penetration had taken place during the sexual act by the appellant with the prosecutrix. So far as the age of the prosecutrix is concerned, Urmila Bai P.W.1 mother of the prosecutrix stated in para 7 that she could not tell the date of birth of the prosecutrix. She also did not know whether birth of the prosecutrix was entered in the Kotwari Birth Register or not. As regards the age of her elder

daughter Anita, at first, she said that her age was 13 years but in the next breath, she said that the age of Anita was 15 - 16 years. The prosecutrix P.W.2, on being asked, was also unable to state her age. Inspector Mukti Tirki P.W.9 had proved seizure memo Ex.P.3 whereby the Kotwari Register of Birth was seized. However, a perusal of the seizure memo does not show that the date of birth of the prosecutrix was registered thereunder. It only shows that the date of birth of one Sangeeta, daughter of Pherha Ram Sahu was registered as on 13.2.1992. Urmila Bai P.W.1 in her cross-examination has not stated that she had a daughter with the name Sangeeta. She only stated in para 7 that she had three children namely Anita, Anupa and one son. Thus, seizure memo Ex.P.3 does not help the prosecution in any manner in determining the age of the prosecutrix. Thus, there is no cogent evidence on record to show that the prosecutrix was a woman under 12 years of age.

8. As regards the evidence led by the prosecution to prove the commission of rape by the appellant on the prosecutrix, the testimony of the prosecutrix is wholly un rebutted. She deposed that the appellant had pushed her on the ground in the 'Badi' of Firtu and after removing her underwear mounted on her and committed "Bakni" on her. Thereafter, the appellant gave her two rupees and left her. She returned home and narrated the incident to her mother. At this juncture, the witness started crying before the Court and did not depose any further. Looking to the demeanour of the witness, no further question was asked by the prosecution. In cross-examination in answer to the only question asked by the defence, the prosecutrix has stated that by "Bakni" she meant the act of the appellant in removing her underwear. No further question was asked

by the defence to the prosecutrix. The testimony of the prosecutrix is thus wholly unrebutted in cross-examination. There is nothing whatsoever to indicate that the prosecutrix had falsely implicated the appellant. The categorical statement of the prosecutrix that the appellant pushed her on the ground in the "Badi" removed her underwear and mounting himself upon her committed "Bakni" on her would go to show that the accused appellant had committed sexual intercourse with the prosecutrix.

9. The testimony of the prosecutrix is fully corroborated by Dr. Farzana Begum P.W.6 who found, on internal examination of the prosecutrix on 8.11.2004, that her hymen was ruptured with congestion and reddishness. Swelling was present in the vagina and the prosecutrix was complaining of pain. The medical evidence read with wholly unrebutted testimony of the prosecutrix clearly proves the act of penetration by the appellant while committing sexual intercourse with the prosecutrix. Inspector Mukti Tirki P.W.9 has proved the seizure of the *Chaddi* worn by the prosecutrix vide Ex.P.2 which is dated 8.11.2004 on 11.00 A.M. i.e. shortly after the F.I.R. was lodged. Dr. Farzana Begum P.W.6 has proved that she had prepared vaginal slides of the prosecutrix and advised chemical examination. Inspector Tirki P.W.9 has also proved that the underwear of the appellant was also seized vide Ex.P.4 dated 8.11.2004. The prosecution has tendered the report of the F.S.L. Ex.P.15 in evidence which clearly shows that the presence of semen and human spermatozoa on the underwear of the prosecutrix as also of the appellant and the vaginal slides was confirmed.

10. Sitaram P.W.5 has also stated that Urmila Bai came searching for him and told her that the appellant had done "*Dharpakad*" with her daughter whereupon the villagers had called Trilochan who had admitted doing "*Bura Kaam*". In cross-examination para 6 he has admitted that Urmila Bai had told that the appellant had done "*Chhedkan*" with her daughter and the appellant had also admitted this fact. Thus, the testimony of Sitaram P.W.5 also corroborates the testimony of Urmila Bai P.W.1. Kailash P.W.10, Secretary of the Gram Panchayat Kamta has also stated that Urmila Bai told him that the appellant was doing some indecent act with her daughter in the "*Byard*" but did not tell him as to what indecent act was committed by the appellant. Heavy reliance was placed by the learned counsel for the appellant on the testimony of Sitaram P.W.5 and Kailash Goswami P.W.10 to support the arguments that the testimony of prosecutrix is not reliable. This argument has to be considered only to be rejected.

11. The evidence led by the prosecution is very natural and inspires confidence. The testimony of the prosecutrix is wholly reliable since it is completely unrebutted in cross-examination and there is nothing to show that she had any reason to falsely implicate the appellant. Her testimony is fully corroborated by medical evidence of Dr. Farzana Begum and also by the report of F.S.L. Ex.P.15. The case law cited by the learned counsel for the appellant is clearly distinguishable and does not help the appellant in any manner.

12. Thus, the evidence led by the prosecution clearly establishes the guilt of the appellant for committing rape on the prosecutrix. Since the prosecution has failed to establish that the prosecutrix was



a woman under 12 years of age, the conviction of the appellant under Section 376(2)(f) cannot be sustained. Having considered the evidence led by the prosecution in its entirety, in my considered opinion, the guilt of the appellant under Section 376 (1) of the I.P.C. has been established beyond reasonable doubt. So far as the sentence awarded by the trial Court is concerned, looking to the manner in which the appellant, aged about 48 years, committed rape on a minor child, it does not call for any interference. In a tradition bound and conservative society, more particularly in a rural area, the shame of sexual assault on a girl of about 11 years cannot be lost sight of. The Courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women, particularly of tender age and children. For such heinous offences, such a sentence has to be awarded which would discourage wolves in the society who are on the prowl for easy prey, more so when the victim of crime is a minor child.

14. In the result, the appeal is partly allowed. Conviction of the appellant under Section 376(f) of the I.P.C. is altered and instead the appellant is convicted under Section 376 (1) of the I.P.C. The sentence awarded by the trial Court is maintained.

Sd/-  
Dilip Raosaheb Deshmukh  
Judge

1.03.2006

Anjan